

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
CoxCom, Inc. d/b/a Cox Communications	)	CSR 7871-E
New England	)	CSR 8088-E
	)	
Petitions for Determination of Effective	)	
Competition in various Franchise Areas in Rhode	)	
Island	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 19, 2009**

**Released: February 20, 2009**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. CoxCom, Inc. d/b/a Cox Communications New England, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7 and 76.905(b)(4) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.”<sup>1</sup> Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act of 1934, as amended (“Communications Act”)<sup>2</sup> and the Commission’s implementing rules,<sup>3</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by Verizon New England Inc. (“Verizon”), hereinafter referred to as “Competitor.” The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> For the reasons set forth below, we grant the Petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

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<sup>1</sup> Petitioner states that the Rhode Island Division of Public Utilities and Carriers, the designated local franchising authority under state law, has established the franchise areas involved in this case as Areas 2, 3 and 8 (CSR 7871-E) and Areas 1 and 4 (CSR 8088-E) for cable television purposes. Petition at 1, n.1.

<sup>2</sup>See 47 U.S.C. § 543(1)(1)(D).

<sup>3</sup>47 C.F.R. § 76.905(b)(4).

<sup>4</sup>47 C.F.R. § 76.906.

<sup>5</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>6</sup>See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

3. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier (“LEC”), or its affiliate, offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator.<sup>7</sup> This test is otherwise referred to as the “LEC” test.

4. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.<sup>8</sup> It is undisputed that these Communities are served by both Petitioner and Competitor, a local exchange carrier, and that these two MVPD providers are unaffiliated. The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>9</sup> and is supported in this petition with copies of channel lineups for Competitor.<sup>10</sup> Finally, Petitioner has demonstrated that the Competitor has commenced providing video programming service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.<sup>11</sup>

5. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable system serving the Communities has met the LEC test and is subject to effective competition.

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<sup>7</sup>See 47 U.S.C. § 543(l)(1)(D).

<sup>8</sup>See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-15 (1999) (“*Cable Reform Order*”).

<sup>9</sup>See 47 C.F.R. § 76.905(g). See also Petitions at 13-14 (CSR 7871-E) and 14-15 (CSR 8088-E).

<sup>10</sup>See Petitions at Exhibit 5 (CSR 7871-E) and Exhibit 6 (CSR 8088-E).

<sup>11</sup>See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-15. See also Petitions at 7-13 (CSR 7871-E) and 7-14 (CSR 8088-E).

### III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by CoxCom, Inc. d/b/a Cox Communications New England **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>12</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>12</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 7871-E

COMMUNITIES SERVED BY COXCOM, INC. d/b/a COX COMMUNICATIONS  
NEW ENGLAND

## Rhode Island Service Areas 2, 3 and 8.

Communities	CUIDs
Westerley	RI0001
Providence	RI0003
North Providence	RI0004
Cranston	RI0013
Johnston	RI0014
Narragansett	RI0021
South Kingstown	RI0023
Scituate	RI0032
Hopkinton	RI0034
Charlestown	RI0035
Richmond	RI0036
Foster	RI0045

## CSR 8088-E

## Rhode Island Service Areas 1 and 4

Communities	CUIDS
Pawtucket	RI0005
Smithfield	RI0015
North Smithfield	RI0016
Lincoln	RI0017
Central Falls	RI0018
Cumberland	RI0019
Woonsocket	RI0020
East Providence	RI0024
Gloucester	RI0037
Burrillville	RI0038